In the Supreme Court of the United States

IN THE MATTER OF THE APPLICATION OF JAMES LINCOLN FOR A WRIT OF HABEAS CORPUS.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

MOTION.

Comes now James Lincoln, petitioner in an application to this Court for a Writ of Habeas Corpus and files this, his motion, asking leave of the Court to file his said petition and application for a Writ of Habeas Corpus for the following reasons, to-wit:

That your petitioner shows to this Court that the Honorable Judge of the District Court in and for the District of Nebraska, presided at the trial of your petitioner and thereafter rendered judgment upon the verdict returned against him and overruled the motion for a new trial and a motion in arrest of judgment filed by your petitioner and found adversely to all the claims presented by your petitioner relating to the jurisdiction of the said Court, and that the Honorable Judge of said Court requested that the relief sought by your petitioner be made in the form of an original application to this Court.

That the judgment of said Court and the imprisonment

thereunder of your petitioner is illegal and void, for the reason that the application of the law to your petitioner under the circumstances as presented in the indictment found against him is unconstitutional and void, and that the United States District Court for the District of Nebraska was without jurisdiction of the offense charged against your petitioner.

That the United States Circuit Court of Appeals for the Eighth Circuit has passed adversely upon a similar application as this of your petitioner in the case of *In Re Boyd*, reported in the 49th Fed. Rep., Page 48.

That for the reasons stated, an application to this Court is necessary to relieve your petitioner of his unjust and illegal confinement under a void judgment of the District Court of the United States for the District of Nebraska.

By .....

.....

.....

IN THE SUPREME COURT OF THE UNITED STATES.

IN THE MATTER OF THE APPLICATION OF JAMES LINCOLN FOR A WRIT OF HABEAS CORPUS.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner comes now and shows to this Honorable Court that he is a citizen of the United States and a resident of the State and District of Nebraska; that he is unjustly and

unlawfully held, detained and imprisoned in the County Jail of Douglas County, Nebraska, at and in the city of Omaha, by one George Stryker, jailor of said jail, on, under and by virtue of a warrant of commitment from the District Court of the United States, in and for the District of Nebraska, a copy of said commitment is hereby attached hereto and made a part hereof, and is marked Exhibit "A."

Your petitioner further shows that at the November, A. D. 1905 term of United States District Court in and for the District of Nebraska, the grand jurors of the United States and of the United States Court within and for the said District of Nebraska, having been empaneled, sworn and charged to inquire into and of offenses against the laws of the United States, committed in the District of Nebraska, found and returned an indictment against your petitioner, James Lincoln, charging him with introducing liquor into the Indian country, to-wit, the Winnebago Reservation in Thurston County, Nebraska, in violation of the laws of the United States, and which said indictment was found under the Act of Congress of January 30th, A. D. 1897, (29th Stat. at Large, P. 506), a copy of which said indictment is hereby and hereto attached and made a part hereof and is marked Exhibit "B."

Your petitioner further shows that he, on the 14th day of February, A. D. 1906, entered a plea of "not guilty" to said indictment and the charge therein set forth before the said United States District Court of the said District of Nebraska, and that he, your petitioner, was on the said 14th day of February, 1906, put upon trial and tried before and to a jury in the said United States District Court for the said District of Nebraska, the Hon. William H. Munger, Judge of said Court

in said District presiding, and said jury returned against your petitioner a verdict of "guilty;" that thereafter a motion was filed and caused to be filed by your petitioner, with the Clerk of said Court in the said District for a new trial, that said motion came on for hearing before said Court for said District, and that said motion was in said Court overruled: That thereupon your petitioner filed and caused to be filed with the Clerk of said Court for said District, a motion in arrest of judgment, that said motion in arrest of judgment so filed came on for hearing before the said judge of the said Court in said District, and that said motion was by said Court overruled: That then and thereupon the said United States Court for said District of Nebraska entered judgment upon the verdict of "guilty" and pronounced sentence upon and against your petitioner: That the judgment and sentence of the Court was and is that your petitioner be imprisoned in the jail of Douglas County, at and in the City of Omaha, Douglas County, Nebraska, for a period of sixty days, and that he, your petitioner, pay a fine of $100, and that he, your petitioner, stand committed until the fine and costs are paid: That said sentence pronounced by said Court against your petitioner began on and upon the 19th day of February, 1906, and your petitioner is now unjustly and unlawfully detained in the custody of George Strycker at, in and within the Douglas County jail in and for Douglas County, Nebraska.

Your petitioner further shows that his detention and imprisonment is unjust, is illegal and is void in this, to-wit:

First. That the enabling act of the Congress of the United States admitting the Territory of Nebraska as a State, did not except from its jurisdiction any part of the country known as the Winnebago Reservation, in Thurston County,

Nebraska; that said enabling act was passed April 19, 1864, and is found in 13th United States Statutes at Large, Page 47.

Second. That said Winnebago Reservation in Thurston County, Nebraska, is a part of the organized territory of the State of Nebraska, the same having been organized under an act entitled, "An Act defining the boundaries of Thurston County, Nebraska." Laws of 1889, Chapter 3, and found on Page 603 of the Compiled Statutes of Nebraska, 1905, and to which, for greater certainty, your petitioner begs leave here to refer. That all the Winnebago Indians and formerly members of the Winnebago tribe of Indians, including your petitioner, are allottees of land under the provisions of the Act of Congress of February 8, 1887, 24 United States Statutes at Large, Page 388, and they are citizens and residents of the said Thurston County and said State of Nebraska; that they participate in the local government by exercising the right of electoral franchise in all respects as any and all other residents and citizens in and ot said County and said State; that Winnebago Indians have been and are elected to, qualified and have held and hold the offices of County Commissioners, Justices of the Peace, Constables, Road Overseers, Assessors, Judges of Elections and Public School Directors.

Third. That the State of Nebraska exercises police power and supervision over the Territory of and known as the Winnebago Reservation, in Thurston County, Nebraska, and in all places within the boundaries of the said Winnebago Reservation in said Thurston County, Nebraska; that the State of Nebraska exercises police power and supervision over all Territory and places within the boundaries of the State of Nebraska and District of Nebraska except such territory and places over which the said State of Nebraska has relin-

quished jurisdiction to the United States; that the State of Nebraska has provided by law, duly enacted by the Legislature of said State of Nebraska against the sale of liquors to Indians, and for the control of and to regulate the liquor traffic within the limits of the said State of Nebraska except where the said State of Nebraska has granted the jurisdiction of special tracts, pieces or parcels of land to the United States; that the law governing and regulating the sale of liquors in the State of Nebraska is, "An Act to regulate the license and sale of malt, spirituous and vinous liquors and to repeal chapter 52 of the Code of Criminal Proceedure of the General Statutes of 1873, entitled 'License and Sale of Liquors,'" and to repeal an act entitled, "An Act to amend section 575 of chapter 58 of the Criminal Code," approved February 8, 1875, and to repeal an act to regulate the issuing of licenses for the sale of malt, spirituous and vinous liquors in the State of Nebraska, approved February 25, 1875; that said law took effect July 1st, A. D. 1881, and was and is for the entire control of and over the purchase, sale and use of malt, spirituous and vinous liquors in and within the State of Nebraska, and said law can be found at and upon Page 1041 of the Compiled Statutes of the State of Nebraska, 1905; that said Act is a full and complete regulation of the liquor traffic in and within the State of Nebraska, and it is intended to and does cover all the territory within the boundaries of the said State of Nebraska except such tracts, pieces or parcels of land specially relinquished to the United States; that no part, piece, parcel or tract of land in and within the said Winnebago Reservation of and in Thurston County, Nebraska, has ever been excepted or relinquished by the said State of Nebraska to the United States.

regulating the liquor traffic in so far as it applies to the Winnebago Reservation in the State of Nebraska, was enacted long after the Enabling Act by which Nebraska became a state on an equal footing with the other states of the United States and long after the Winnebago Indians became and were citizens of the State of Nebraska and the United States, and long after your petitioner became and was a citizen and resident of the State of Nebraska and the United States, and long after Thurston County, Nebraska, including the Winnebago Reservation, was duly organized.

Fifth. That the United States has no police power or jurisdiction over the country known as the Winnebago Reservation in the State of Nebraska, and that the law under which the indictment was drawn against your petitioner and under which your petitioner was found guilty, and under which your petitioner is imprisoned and deprived of his liberty, is unconstitutional and void in so far as it applies to the said Winnebago Reservation in Thurston County, Nebraska, and the United States District Court in and for the District of Nebraska is wholly without jurisdiction in the premises.

Sixth. That the law prohibiting the introduction of malt, spirituous and vinous liquors into the Indian country was and is incident to the main intention and purpose of preventing the sale of malt, spirituous and vinous liquors to the Indians who were and are wards of the United States government; that your petitioner shows to the Court that there are no such wards of the United States government on the Winnebago Indian Reservation in Thurston County, Nebraska.

Your petitioner further shows that his detention and imprisonment as herein set forth is illegal, in this, to-wit:

A. The sentence under which your petitioner is held is unjust, illegal and void.

B. The commitment under which your petitioner is held is unjust, illegal and void.

(*Fourth.* That said act of Congress of January 30, 1897,) Page 7

C. The Court was without jurisdiction to impose the particular sentence under which your petitioner is now held at and confined in the county jail of Douglas County, Nebraska.

D. The Court was without jurisdiction or power to sentence your petitioner to imprisonment in the county jail of Douglas County, Nebraska, for the offense charged against your petitioner and of which your petitioner was convicted.

E. Your petitioner's imprisonment and detention in the county jail of Douglas County, Nebraska, under said sentence as imposed by the United States District Court of the District of Nebraska, is contrary and in violation of the statutes and the laws of the United States.

F. There was no judgment and there is no judgment of the Court upon which to pass sentence on and upon your petiwhich to pass sentence on and upon your petitioner or to base tioner or to base the commitment under which your petitioner is held at and in the county jail of Douglas County, Nebraska.

G. The United States District Court of the District of Nebraska, which said Court passed sentence on and upon your petitioner, was without jurisdiction of the offense charged in the indictment upon which your petitioner was put upon trial and of which he was found guilty, and the sole and exclusive jurisdiction of the offense charged in the indictment

was and is in the District Court of Thurston County, Nebraska, and not in the United States Court of the District of Nebraska.

Wherefore to be relieved of the said unlawful detention and unjust, illegal and unlawful imprisonment your petitioner prays that a Writ of Habeas Corpus, to be directed to the said George Stryker, jailer of, for, in and at the county jail of Douglas County, Nebraska, may issue in this behalf, so that your petitioner may be forthwith brought before this Honorable Court to submit to and to receive what the law may direct.

.....

By

.....

.....

Counsel for the Petitioner.

State of Nebraska, Douglas County, ss:

I, James Lincoln, being first duly sworn upon oath depose and say that I am the petitioner named in the foregoing petition, subscribed by me, that I have read the said petition, that I know the contents thereof, that the facts therein set forth and the allegations therein made are true.

Subscribed in my presence, sworn to by me on this ..... day of March, A. D. 1906.

.....

Notary Public, Douglas County, Nebraska.

Commission expires .....

PLEAS, Before the HON. WILLIAM H. MUNGER, Judge of the District Court of the United States for the District of Nebraska, within the Eighth Judicial Circuit, at the November Term, 1905, of the District Court of the United States, for the District of Nebraska.

BE IT REMEMBERED, That at the said November Term, 1905, on the 15th day of November, 1905, the following proceedings were had in said Court, as appear of record in Journal "U," page ..., of said Court, to-wit:

UNITED STATES OF AMERICA,

569 N *VS.*

JAMES LINCOLN AND BRUCE BLACKDEER.

PRESENTMENT OF INDICTMENT.

On this day the Grand Jury came into Court, having been heretofore, to-wit: On the 31st day of October A. D. 1905, duly drawn according to law and duly empaneled and sworn on the 14th day of November, A. D. 1905, to well and truly try and true presentment make of all matters coming under their notice, and by their foreman, Joseph Crow, presented to the Court a True Bill of Indictment against said defendants, James Lincoln and Bruce Blackdeer, charging them, said defendants, with introducing intoxicating liquor on an Indian Reservation as specifically set forth in said indictment, contrary to the laws of the United States.

Whereupon, on motion of Irving F. Baxter, United States attorney for the District of Nebraska, it is *Ordered*, by the Court, that said Bill of Indictment be received and that

the Clerk endorse thereon, "Presented in open Court by the Grand Jury, and filed November 15, 1905."

Thereupon afterwards, to-wit: On the said 15th day of November, 1905, the indictment was filed in said case, which said indictment is in words and figures following, to-wit:

EXHIBIT "B."

In the District Court of the United States within and for the District of Nebraska, in the Eighth Judicial Circuit,

United States of America,
District of Nebraska.
ss:

in the term beginning the 13th day of November, in the year of our Lord, one thousand nine hundred and five.

The grand jurors of the United States of America, duly impanelled, sworn and charged to inquire within and for the said District of Nebraska, upon their oaths do present that James Lincoln and Bruce Blackdeer, late of the District of Nebraska, in the County of Thurston, in said District, heretofore, to-wit, on the 26th day of August, in the year of our Lord, one thousand nine hundred and five, at the Winnebago Indian Reservation, in the County of Thurston, in the State of Nebraska, Circuit and District aforesaid, and within the jurisdiction of this Court then and there being, did then and there wrongfully and unlawfully introduce into Indian country, to-wit, into and upon the Winnebago Indian Reservation, a reservation set apart for the exclusive use and benefit of certain tribes of the Winnebago Indians, certain spirituous, vinous, malt and other intoxicating liquors, to-wit: One pint of whiskey, one pint of brandy, one pint of gin, one pint of

beer, one pint of ale, and five pints of other spirituous, malt, vinous, and intoxicating liquors of the value of one dollar each, contrary to the form, force and effect of the statute of the United States of America in such case made and provided, and against the peace and dignity of the said United States.

IRVING F. BAXTER,
United States Attorney.

Endorsements appear on said Indictment in words and figures following, to-wit:

Presented in open Court by the Grand Jury and filed November 15, 1905. R. C. HOYT, *Clerk.*

No. 569, Doc. N. United States District Court.

United States v. James Lincoln, Bruce Blackdeer.

INDICT: Introducing liquor on reservation. 2nd Supp. 545

A True Bill: Joseph Crow, Foreman.

Irving F. Baxter, U. S. Attorney.

Filed Nov. 15, 1905, R. C. Hoyt, Clerk.

Thereupon afterwards, to-wit: At the said November Term, 1905, on the 14th day of February, 1906, the following proceedings were had in said case as appear of record in Journal "V," page .... of said Court, to-wit:

UNITED STATES OF AMERICA,
569 N *VS.*
JAMES LINCOLN.

ARRAIGNMENT
AND PLEA.

Now the defendant, James Lincoln, appears at the bar of the Court personally, and by his Attorneys, Hon. Thomas L.

Sloan and Hon. John W. Battin, and he is duly arraigned upon an indictment had, presented and filed herein against him, on the 15th day of November, 1905, charging him, said defendant, with introducing intoxicating liquor into and upon the Winnebago Indian Reservation, as specifically set forth in said indictment, contrary to the laws of the United States.

Thereupon said defendant, James Lincoln, enters a plea of "Not Guilty" to the offense as charged in said indictment.

Thereupon afterwards, to-wit: At the November Term, 1905, on the 15th day of February, 1906, the following proceedings were had in said case as appear of record in Journal "V," page ...., of said Court, to-wit:

UNITED STATES OF AMERICA,

569 N *VS.*

JAMES LINCOLN.

TRIAL.

Now comes the United States of America, by Hon. Charles A. Goss, attorney of the United States for the District of Nebraska, and the defendant, James Lincoln, personally and by his attorneys, Hon. Thomas L. Sloan and Hon. John W. Battin, and said defendant having been heretofore, to-wit, on the 14th day of February, 1906, duly arraigned upon an indictment had, presented and filed herein against him, charging him with introducing intoxicating liquor into and upon the Winnebago Indian Reservation, as set forth in said indictment, and having entered a plea of "Not guilty" to the offense charged in said indictment, and this cause now being moved for trial,

It is Ordered, by the Court, that a jury come, to-wit:

1. A. J. Hill,
2. Sam Reitz,
3. John P. Young,
4. John L. Denning,
5. R. M. Farr,
6. Jas. Calfee,
7. J. I. Beech,
8. F. B. Hunt,
9. Geo. Hemstedt,
10. J. W. Robbins,
11. W. D. Fisher,
12. Wm. Wurtz.

Twelve (12) good and lawful men who are duly empaneled and sworn to try said cause. The defendant and his attorneys being at all times present, the opening statements are made, the evidence is heard and concluded, and after hearing the arguments of the respective attorneys and the charge of the Court, the jury retired in charge of a bailiff, duly sworn, for deliberation.

UNITED STATES OF AMERICA,

569 N *VS.*

JAMES LINCOLN.

VERDICT.

The jury heretofore duly empaneled and sworn to try the above entitled cause, having heretofore retired to consider of their verdict in said case, now come into Court and by their foreman, in their presence present the following verdict, to-wit:

"In the District Court of the United States for the District of Nebraska.

THE UNITED STATES

VS.

JAMES LINCOLN.

No. 569. Doc. N.

VERDICT.

We, the jury duly empaneled and sworn to try the issues joined in the above entitled cause, do find the said defendant, James Lincoln, guilty in the manner and form as charged in the indictment therein.

W. A. Wurtz, *Foreman.*"

Endorsed: Filed Feb. 15, '06. R. C. Hoyt, *Clerk.*

Thereupon afterwards, on the 16th day of February, 1906, motion for a new trial and motion in arrest of judgment, was filed in said case, which said motions are in words and figures following, to-wit:

In the District Court of the United States for the District of Nebraska.

THE UNITED STATES OF AMERICA

VS.

JAMES LINCOLN.

MOTION FOR NEW TRIAL.

Comes now the defendant and moves the Court that the verdict heretofore rendered against him in this cause be va-

cated and a new trial awarded the defendant for the following reasons, to-wit:

1. That the verdict is contrary to law.

2. That the verdict is not sustained by sufficient evidence.

3. That this Court has no jurisdiction to try and determine said case, and that the defendant is not subject to prosecution under the charge presented in the indictment filed in this case.

4. For the reason that although the defendant is a Winnebago Indian, he is an allottee of land under the provisions of the Act of Congress of February 8th, 1887, and known as the General Allotment Act, and by which he is declared to be a citizen of the United States, and that he does not sustain any tribal relations to any tribal organization.

5. For the reason that the Winnebago Reservation is not Territory within and under the exclusive jurisdiction of the United States, and that the United States has no exclusive jurisdiction or police power over the said Winnebago Reservation in Thurston County, Nebraska.

6. That the said Winnebago Reservation in Thurston County, Nebraska, is within the sole and exclusive jurisdiction of the State of Nebraska for all police regulations and jurisdiction.

7. For the reason that the evidence shows that the liquor which it is alleged that the defendant introduced into the Indian Country, to-wit, the Winnebago Reservation in Thurston County, Nebraska, had been transported to him over a part of the reservation and out of the said Winnebago Reservation and upon land not a part of said Winnebago Res-

ervation when it was taken from him by the Superintendent of the Winnebago Agency School, and that the act of introducing liquor was not consumated. That there is provision for the punishment of the attempting to introduce liquor into the Indian Country.

8. For the reason that the Winnebago Reservation in Thurston County, Nebraska, is an organized part of the State of Nebraska over which County and State Government is maintained and enforced, and that the Indians of the former Winnebago tribe participate in said government by nominating and electing the officers of said government, many of whom are Winnebago Indians.

JAMES LINCOLN,
By THOMAS L. SLOAN AND
JOHN W. BATTIN,
His Attorneys.

ENDORSED: Filed Feb. 16, 1906.
R. C. HOYT, *Clerk.*

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEBRASKA.

THE UNITED STATES
OF AMERICA,
VS.
JAMES LINCOLN.

MOTION IN ARREST OF JUDGMENT.

Comes now the defendant and moves the Court to arrest judgment on the indictment herein on which the defendant was convicted because the facts therein stated do not consti-

tute an offense against the laws and statutes of the United States.

2. For the reason that the defendant is an allottee of land under the provisions of the Act of Congress of February 8, 1887, and that he is a citizen of the State of Nebraska and of the United States, and that the territory of the Winnebago Reservation, in Thurston County, Nebraska, is not within the sole jurisdiction of the United States. That the whole of said Winnebago Reservation in Thurston County, Nebraska, has been allotted, and that all the former members of the Winnebago tribe of Indians have been allotted as far as there was land in sufficient quantity to allot them. That many of the said allotments of deceased allottes, of the Winnebago tribe, have been sold, and that the title has passed wholly out of both the United States and the Indian, and although it is within the original limits of the Winnebago Reservation, in Thurston County, Nebraska, it is now no part of said reservation.

3. That the said Winnebago Reservation, in Thurston County, Nebraska, is not territory within the sole or exclusive jurisdiction of the United States.

4. That the United States has not police jurisdiction over said Winnebago Reservation in Thurston County, Nebraska.

5. That the State of Nebraska has the exclusive jurisdiction for police regulation over the Winnebago Reservation in Thurston County, Nebraska.

6. That all of the Winnebago Indians or their descendants are allottes of land under some provision of law or treaty, except such minor children who have been born since the land has been exhausted by allotment.

7. That the Winnebago Indians, allottes upon the Winnebago Reservation in Thurston County, Nebraska, are citizens of the state of Nebraska, maintaining a county and state government over their former reservation and participating in said government as electors, officers, and subject under the laws of the State of Nebraska.

8. That the State Courts and County Courts of Thurston County, Nebraska, exercise a criminal and police jurisdiction over all the inhabitants in Thurston County, Nebraska, including the Winnebago Reservation in said Thurston County, Nebraska, including the Winnebago Reservation in said Thurston County, Nebraska, and all Winnebago Indians residing thereon.

JAMES LINCOLN,
By THOMAS L. SLOAN AND
JOHN W. BATTIN,
His Attorneys.

ENDORSED: Filed Feb. 16, 1906. R. C. HOYT, *Clerk.*

Thereupon afterwards, to-wit: At the said November Term, 1905, on the 19th day of February, 1906, the following proceedings were had in said case as appear of record in Journal "V." page .... of said Court, to-wit:

UNITED STATES OF AMERICA.

569 N *VS.*

JAMES LINCOLN.

MOTION FOR NEW TRIAL OVERRULED.

This cause came on for hearing upon the Motion for a New Trial of the above entitled cause and was duly submitted to the Court, the Hon. Charles A. Goss appearing for the United

States of America, and the Hon. Thomas L. Sloan and John W. Battin for the defendant, James Lincoln. After due consideration thereof and being fully advised in the premises, it is by the Court—

Ordered, That the Motion for a New Trial be and the same is hereby overruled. To which ruling of the Court the defendant excepts.

UNITED STATES OF AMERICA,

569 N *VS.*

JAMES LINCOLN.

MOTION IN ARREST OF JUDGMENT OVERRULED.

This cause came on for hearing upon the Motion in Arrest of Judgment in the above entitled cause, and was duly submitted to the Court, the Hon. Charles A. Goss appearing for the United States of America, and the Hon. Thomas L. Sloan and Hon. John W. Battin for the defendant, James Lincoln. After due consideration thereof and being fully advised in the premises, it is by the Court—

Ordered, That the Motion in Arrest of Judgment be and the same is hereby overruled. To which ruling of the Court the defendant excepts.

UNITED STATES OF AMERICA,

569 N *VS.*

JAMES LINCOLN.

SENTENCE.

Now the defendant, James Lincoln, appears at the bar of the Court personally, and by his Attorneys, Hon. Thomas L. Sloan and Hon. John W. Battin, and he having been heretofore, to-wit: On the 15th day of February, 1906, convicted

(by a jury duly empaneled and sworn to try said cause,) of the crime of introducing intoxicating liquor into and upon the Winnebago Indian Reservation, as specifically set forth in the indictment filed therein. Now comes Hon. Charles A. Goss, Attorney of the United States for the District of Nebraska, and moves the Court that sentence and judgment be pronounced against said defendant upon the conviction of "Guilty," as rendered by the jury empaneled and sworn therein. And said defendant, being asked whether he has any legal reason why sentence and judgment should not be pronounced against him, and he being heard in that behalf, and no cause being shown, it is by the Court,

Considered, Ordered and Adjudged, That said defendant, James Lincoln, pay into this Court a fine of one hundred ($100.00) dollars and costs of prosecution, to be taxed, and that the United States have execution therefor, and be imprisoned in the common jail of Douglas County, situated at Omaha, Nebraska, for a term of sixty (60) days, and until said fine and costs are paid. The term of imprisonment to date from 12 o'clock, noon, this day.

Thereupon afterwards, to-wit: On the said 10th day of February, 1906, final commitment was duly issued in said case and returned and filed on said day, which said final commitment is in words and figures following, to-wit:

EXHIBIT "A."

Final Commitment. (Original.)

UNITED STATES OF AMERICA,

District of Nebraska.

The President of the United States of America.

To the Marshal of the United States for the District of

Nebraska, and to the Keeper of the Common Jail of Douglas County, Nebraska, Greeting:

Whereas, on the 15th day of February, A. D. 1906, at a term of the District Court of the United States for the District of Nebraska, held at Omaha, in said District, James Lincoln was convicted of the crime of introducing liquor on an Indian Reservation, contrary to the laws of the United States, and sentenced to be imprisoned in the Common Jail of Douglas County, Nebraska, situated at Omaha, for a period of sixty (60) days, beginning at noon on the 19th day of February, A. D. 1906, and further sentenced to pay a fine of $100.00 and costs of prosecution, taxed at $....., and stand committed in the said Common Jail of Douglas County aforesaid, until said fine, costs and accrued costs be paid.

Now, therefore, you, the said Marshal, are hereby commanded to deliver to the Keeper of the said Common Jail of Douglas County, Nebraska, the body of James Lincoln, who is now in your custody.

And you, the said Keeper of said Common Jail of Douglas County, Nebraska, are hereby commanded to receive the body of the said James Lincoln and safely keep him in said jail until said sentence shall have been fully complied with, or until he shall have been discharged therefrom by due course of law.

Witness, the Honorable William H. Munger Judge of the District Court of the United States (SEAL.) for the District of Nebraska, at Omaha, this 19th day of February, A. D. 1906.

R. C. HOYT, *Clerk*.

Endorsed on said Final Commitment is the Return of the Marshal, in words and figures following, to-wit:

RETURN.

Received this Commitment on the 19th day of February and on the same day I delivered the within named James Lincoln to the custody of the within named Jail Keeper, with whom I left at the same time a certified copy of this commitment.

Dated this 19th day of February, A. D. 1906.

WM. P. WARNER, *U. S. Marshal.*

By LOGAN SAMMONS, *Deputy.*

MARSHAL'S COSTS.

Service	$ .50
Mileage	...
Expense	...
Total	.50

Rec'd at Marshal's office, 2, 19, 1906.

Handed Deputy 2, 19, 1906.

ENDORSED:

Filed Feb. 19, 1906. R. C. HOYT, *Clerk.*

CERTIFICATE.

United States of America,
District of Nebraska.
ss:

I, R. C. Hoyt, Clerk of the District Court of the United States for the District of Nebraska, hereby certify that the foregoing is a true and correct transcript of the pleadings, process and proceedings of record and on file in said Court in case of the United States of America vs. James Lincoln, No.

569, Doc. N, as the same appear of record and on file in my said office, as such Clerk.

Witness my hand and the seal of said Court, at Omaha, in said District, this 19th day of February, 1906.

(SEAL.) R. C. HOYT, *Clerk.*

IN THE DISTRICT COURT OF THE UNITED STATES WITHIN AND FOR THE DISTRICT OF NEBRASKA.

UNITED STATES

VS.

JAMES LINCOLN.

STIPULATION.

It is hereby stipulated and agreed by and between the parties hereto, that the defendant is and was, on August 26th, 1905, an allottee of lands granted to him on the Winnebago Reservation in Thurston County, Nebraska, said allotment having been made to him under the provisions of the Act of Congress of February 8, 1887, and known as the General Allotment Act. That said allotment was made to him and the first patent therefor issued to him in December, 1893, and that the trust limitation has not yet expired, the title to said allotted land still being held in trust by the Government.

That said James Lincoln, defendant, was indicted for introducing liquor into the Indian country, to-wit, the Winnebago Reservation in Thurston County, Nebraska, said indictment being found under the provisions of the Act of Congress of January 30, 1897 (29 Statutes at Large, page 506). That on August 26, 1905, the defendant had procured, at a point

outside of the said Winnebago Reservation, certain whiskey which he was taking and did take within and upon said Reservation, with the intention of taking it to his home, which was upon another allotment than his own, but the title to which allotment was still held in trust by the Government, and it was his intention there to use and drink said whiskey.

That said Winnebago Reservation had been allotted practically in whole, and that many of the allotments of deceased Winnebago Indians have been sold under the provisions of the Act of Congress of May 27, 1902 (32 Stat. at Large, 245). That there are within the original boundary limits of the Winnebago Reservation, in Thurston County, Nebraska, lands that have been sold and deeded to white people and the title thereto has passed out of both the Indian and the United States Government.

That all of the Winnebago Indians who were born and living at the time of allotment in the year 1888 received allotments under the provisions of the Act of February 8, 1887, or of some previous act or treaty.

That the Winnebago Reservation is within an organized County of the State of Nebraska, known as Thurston County, and that the Winnebago Indians exercise all the rights of citizenship and take part in the County Government extending over the said Winnebago Reservation, some of them holding offices under the County government as County Commissioners, Justices of the Peace, Constables, Road Overseers, election officers and jurors in the County and District Courts of the State of Nebraska.

It is further stipulated that only a few of them have

taken out naturalization papers under any Act of Congress and that the defendant has not done so.

Dated February 16, 1906.

CHARLES A. GOSS,
United States Attorney.

THOMAS L. SLOAN,
Attorney for Defendant.

FILE COPY.

Office Supreme Court U. S.
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APR 9 1906
JAMES H. McKENNEY,
Clerk.

In the Supreme Court of the United States.

OCTOBER TERM, 1905.

EX PARTE: IN THE MATTER OF JAMES LINCOLN, PETITIONER. NO. 21, ORIGINAL.

RETURN TO RULE.

Comes now the respondent and in answer to the rule to show cause issued herein says that petitioner is held by him in custody as keeper of the common jail of Douglas County, Nebr., by virtue of a commitment issued by the District Court of the United States for the District of Nebraska on February 19, 1906, a certified copy of which accompanied the petition and which also appears on pages 21 and 22 of the printed copies thereof.

GEORGE STRYKER,
Respondent.
By HENRY M. HOYT,
Solicitor-General.

APRIL 6, 1906.

25847—06